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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGER WAYNE DAVISON,

Defendant and Appellant.

F076049

(Super. Ct. No. BF167646A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John D. Oglesby, Judge.

Robert Navarro, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Detjen, J. and Snauffer, J.

A jury convicted appellant Roger Wayne Davison of driving under the combined influence of alcohol and a drug causing bodily injury (Veh. Code, § 23153, subd. (g)/count 1), driving under the influence of a drug causing bodily injury (Veh. Code, § 23153, subd. (f)/count 2) and three counts of child endangerment (Pen. Code,¹ § 273a, subd. (a)/counts 3-5). The jury also found true three multiple victim enhancements (Veh. Code, § 23558) in counts 1 and 2. Additionally, Davison pled no contest to driving while his driving privilege was suspended for driving under the influence (Veh. Code, § 14601.2, subd. (a)/count 6), a misdemeanor, and in a separate proceeding the court found true allegations that Davison had a prior conviction for violating Vehicle Code section 23152 (Veh. Code, § 23540), and two prior prison term enhancements (§ 667.5, subd. (b)).²

Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On October 12, 2016, Davison and Monica Copas drove to Hart Park in Bakersfield with three of their children, nine-year-old Hazel, seven-year-old Chae, and four-year-old Sambrano. At approximately 4:15 p.m., Jennifer Adkins was with her 14-year-old daughter, Alison, driving eastbound out of the park on Alfred Harrel Highway, when Davison rolled through a stop sign in front of her at River Boulevard, onto the highway. As Adkins drove about two car lengths behind, Davison's car began weaving back and forth over a double yellow line, crossing it five or six times as cars approached from the opposite direction. Adkins continued following Davison's car, three to four car lengths behind. A short time later, Davison pulled off on the right side of the

¹ All statutory references are to the Penal Code unless otherwise noted.

² The jury found not true a great bodily injury enhancement (§ 12022.7) in counts 1 and 2.

road and slowed down, almost to a complete stop. As Adkins was about to pass Davison's car, Davison had his head out of the window as he turned left, without signaling, back onto the road in front of Adkins's truck.

Adkins slammed on her brakes and tried to veer her truck to the left but was unable to avoid colliding with the driver's side of Davison's car, which caused both vehicles to slide to the north side of the highway. Adkins looked over and saw Davison slumped over his steering wheel, checked on her daughter, and called 911.

Police officers soon responded to the scene. In the glove box of Davison's car they found three zip lock bags, each containing a small amount of marijuana. They also found a container for a six-pack of beer with only three unopened beers. Copas told the officers that she thought Davison was "kind of buzzed." As Davison was being taken into the hospital on a gurney, an officer detected an odor of alcohol coming from him.

Although officers were not able to administer any field sobriety tests to Davison, at 5:00 p.m., a nurse drew blood from him. An analysis of Davison's blood disclosed that he had a blood-alcohol content of 0.019 percent and a THC concentration of 7.4 nanograms per millimeter. During the trial, a criminalist testified as an expert that based on Davison's driving performance and the concentration of THC and alcohol in his blood, when the accident occurred, Davison's driving performance was consistent with someone who was impaired due to cannabis or cannabis and alcohol and unable to operate a motor vehicle safely.

As a result of the collision, Adkins sustained a lower back strain and she experienced muscle spasms that required her to take medication and persisted through the date of trial. Her daughter experienced chest pain, difficulty breathing, and back pain that lasted about two weeks. Copas suffered a fracture of her upper lip bone, a cut on her upper lip that required at least one suture, and a cervical strain. Hazel suffered pain in her right leg and some bleeding.

On June 12, 2017, the Kern County District Attorney filed an information charging Davison with the six counts of which he was convicted, the enhancements and allegations that were found true, and the great bodily injury enhancements that the jury did not find true. The court also denied Davison's *Marsden*³ motion that day.

On June 13, 2017, the court denied Davison's second *Marsden* motion. Davison then pled no contest to count 6.

On June 15, 2017, the jury rendered its verdict. In a separate proceeding, the court found true the prior prison term enhancements and the prior conviction allegations.

On July 18, 2017, the court sentenced Davison to an aggregate term of 10 years eight months: an aggravated three-year term on Davison's driving under the influence conviction in count 1, three one-year multiple victim enhancements in that count, consecutive 16-month terms (one-third the middle term of four years) in counts 4, and 5, two one-year prior prison term enhancements, and a concurrent 120-day term in count 6. The court also imposed stayed terms on Davison's driving under the influence conviction in count 2, the multiple victim enhancements in that count, and his child endangerment conviction in count 3.

In pertinent part, the court also imposed a \$100 booking fee (Gov. Code, § 29550, subd. (c)). In count 1 it imposed a \$50 alcohol abuse education and prevention fee (Veh. Code, § 23465, subd. (a)),⁴ a \$4 emergency medical air transportation fee (Gov. Code,

³ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

⁴ The court purported to impose the \$50 fee pursuant to section 1463.25, but that section does not authorize a \$50 alcohol abuse education and prevention fee. However, the fee was authorized under Vehicle Code section 23645 which states "any person convicted of a violation of [Vehicle Code] [s]ection 23152 or 23153 shall, in addition to any other fine, assessment, or imprisonment imposed pursuant to law, pay an alcohol abuse education and prevention penalty assessment in an amount not to exceed fifty dollars" (Veh. Code, § 23645, subd. (a).) In light of the mandatory nature of this fee and the court's clear intent to impose such a fee, we uphold it and modify the judgment to reflect the correct statute under which the fee was authorized. (*People v. Benner* (2010) 185 Cal.App.4th 791, 797.)

§ 76000.10) and a base fine of \$390 (Veh. Code, § 23560), which it converted to three concurrent days in custody. It also imposed a penalty assessment totaling \$1,209 on the base fine that consisted of individual assessments in the amount of \$390 (§ 1464, subd. (a)); \$273 (Gov. Code, § 76000, subd. (a)); \$39 (Gov. Code, § 76104.6); \$156 (Gov. Code, § 76104.7); \$195 (Gov. Code, § 70372, subd. (a)), \$78 (Gov. Code, § 76000.5, subd. (a)); and \$78 (§ 1465.7). In count 2, the court imposed and stayed three days in custody, in lieu of a \$390 base fine and \$1,209 in stayed penalty assessments and fees in the same amounts and with the same statutory basis as those imposed in count 1.

On July 20, 2017, Davison filed a timely appeal.

Davison's appellate counsel has filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) Davison has not responded to this court's invitation to submit additional briefing. However, our review of the record disclosed that Davison's abstract of judgment contains the following errors: (1) it does not list the \$100 booking fee the court imposed or its statutory basis; (2) it does not list the \$50 alcohol abuse education and prevention fee or the \$4 emergency medical air transportation fee the court imposed in count 1 or the statutory basis for each fee; (3) in section 9(c) it erroneously indicates that the \$390 base fine the court imposed in count 1 was imposed pursuant to Vehicle Code section 23550 rather than Vehicle Code section 23560;⁵ (4) it does not list the individual assessment amounts that comprise the

⁵ Vehicle Code section 23550, only applies to convictions for violating section 23152 (Veh. Code, § 23550, subd. (a)). The statutory basis for the \$390 base fine the court imposed in counts 1 and 2 is Vehicle Code section 23560, which, in pertinent part, provides: "If a person is convicted of a violation of Section 23153 and the offense occurred within 10 years of a separate violation of ... [Vehicle Code sections 23152, or 23153] that resulted in a conviction, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 120 days nor more than one year, and by

penalty assessment totaling \$1,209 that the court imposed on the \$390 base fine in count 1 or the statutory basis for each individual assessment; (5) it does not indicate that the court converted the \$390 base fine it imposed in count 2 to three days in custody and that it stayed this custody time; and (6) it does not indicate that the court imposed and stayed a penalty assessment totaling \$1,209 on the \$390 base fine it imposed in count 2 or that the amount of the individual assessments and their statutory basis are identical to those that comprise the penalty assessment of \$1,209 the court imposed in count 1. We will direct the trial court to issue an amended abstract of judgment that corrects these errors. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200 [abstract must “ ‘ ‘ ‘digest or summarize’ ” ’ ” judgment; “[a]ll fines and fees must be set forth in the abstract of judgment”].)

Following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The trial court is directed to file an amended abstract of judgment that memorializes: (1) the \$100 booking fee the court imposed and the statutory basis for this fee; (2) the \$50 alcohol abuse education and prevention fee and the \$4 emergency air transportation fee the court imposed in count 1 and the statutory basis for each fee; (3) the \$390 base fine the court imposed in count 1, the correct statutory basis for this fine, and that the court converted this fine to three concurrent days in custody, (4) the total penalty assessment of \$1,209 on the base fine of \$390 the court imposed in count 1, the individual amounts that comprise the total penalty assessment, and the statutory basis for each individual amount; (5) the \$390 base fine the court imposed in count 2, the statutory basis for this fine, and that the court converted the fine to three days in custody, which it stayed; and (6) that the court imposed and stayed a penalty assessment totaling \$1,209 on

a fine of not less than three hundred ninety dollars (\$390) nor more than five thousand dollars (\$5,000).”

the \$390 base fine it imposed in count 2 or that the amount of the individual assessments and their statutory basis are identical to those that comprise the penalty assessment of \$1,209 the court imposed in count 1. The court is also directed to forward a certified copy of the amended abstract of judgment to the appropriate authorities. In all other respects, the judgment is affirmed.